

<p align="center">STATE OF MONTANA</p> <p align="center">COMPLIANCE SUPPLEMENT FOR AUDITS OF</p> <p align="center">LOCAL GOVERNMENT ENTITIES</p>	REF: C/T-14
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PROGRAM/SUBJECT: Cities and Towns - Offices/Boards	

INFORMATION CONTACT: Montana Department of Administration
Local Government Services Bureau
Phone Number: (406) 841-2909

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

CITY/TOWN OFFICERS

1. Compliance Requirements:

- The officers of a city or town consist of one mayor, two council members from each ward, and one city judge. The mayor and council members are elected positions, as is the city judge in a first or second class city. The governing body of a third class city or of a town may by ordinance determine whether the office of city judge must be filled by appointment or by election, or may appoint a justice of the peace or the city judge of another city as judge of the city court. (MCA 7-4-4101, 4102 & 4103; 3-11-205)

(Note 1: The filling of vacancies in elected offices is addressed at MCA 7-4-4112)

(Note 2: A municipality may not enact an ordinance prohibiting city employees from holding the office of councilman. AGO #81, Vol. 41)

- The **mayor**, with the advice and consent of the council, may appoint the following officers:
 1. In a first class city, one city attorney, one city clerk, one city treasurer (or finance officer or clerk-treasurer), one chief of police, one assessor, one street commissioner, one city jailer, and one city surveyor. (MCA 7-4-4101(3))
 2. In a second or third class city, one city attorney, one city clerk (who is ex officio city assessor), one city treasurer (or clerk-treasurer), and one chief of police. (MCA 7-4-4102(4))
 3. In a town, one clerk (who may be ex officio assessor and tax collector and a member of the council) and one marshal (who may be ex officio street commissioner). MCA 7-4-4103(4)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

CITY/TOWN OFFICERS - continued

1. Compliance Requirements - continued:

4. In any city or town, any other officers necessary to carry out the provisions of MCA Title 7. (MCA 7-4-4101, 4102 & 4103)
- The **mayor** has power to supervise the discharge of official duty by all subordinate officers, and to require of any of the officers of a city or town an exhibit of the officer's books and papers. (MCA 7-4-4303(3) & (4))
 - The **city/town council** may:
 1. by ordinance prescribe the duties of all city/town officers (including the chief of the fire department) and fix their compensation. (MCA 7-4-4101, 4102, 4103 & 4110)
 2. abolish, by a majority vote of the council, any office, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council and may discharge any officer so appointed. (MCA 7-4-4105)
 3. by ordinance consolidate any of the offices, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council and may require any of the elected officers to perform any of the duties of an appointed officer whose office has been abolished. (MCA 7-4-4106)
 4. remove any nonelected officer by vote of two-thirds of all the members-elect. (MCA 7-4-4113)
 5. elect a president who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor. In the absence of the president, the council may appoint one of its number to act in the president's place. (MCA 7-4-4403)
 - The **city or town clerk** must:
 1. attend all meetings of the council and record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into;
 2. enter into the Ordinance Book all ordinances, resolutions, and bylaws passed and adopted by the council;
 3. countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council;
 4. sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.
 5. file and keep all records, books, papers, or property belonging to the city or town and deliver the documents or property to the clerk's successor when qualified; (MCA 7-4-4501, 4502, 4511, & 4512)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

CITY/TOWN OFFICERS - continued

1. Compliance Requirements - continued:

6. In addition, a **city clerk** is also required:
 - to take and administer oaths, but must not charge or receive any fees therefore.
 - to make and certify copies of all records, books, and papers in the clerk's possession on the payment of fees that are allowed county clerks, which must be paid into the city treasury;
 - to make and keep a complete index of the journal, ordinance book, finance book, and all other books and papers on file in the clerk's office. (MCA 7-4-4501 & 4502)
- **The city attorney** must:
 1. appear before the city court and other courts and prosecute on behalf of the city;
 2. serve upon the attorney general within 10 days of the filing or receipt a copy of any notice of appeal that the city attorney files or receives in a criminal proceeding;
 3. when required, draft for the city council contracts and ordinances for the government of the city;
 4. when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities, and powers of the city; and
 5. perform other duties that pertain to the functions of the city council or that the city council prescribes by resolution. (MCA 7-4-4604)

(Note: A third class city may retain the county attorney to provide legal services for the city in cases not involving a conflict between the interests of the city and the county, either by an interlocal cooperation agreement or by mutual consent by the governing bodies of the city and county. (MCA 7-4-4606)

Suggested Audit Procedure:

- During the course of the audit, ensure that the various city/town officers fulfill their respective duties, as discussed above.

MUNICIPAL AIRPORTS:

1. Compliance Requirement:

- Subject to the limitations specified in MCA 15-10-420, and for the purpose of establishing, constructing, equipping, maintaining, and operating airports and ports, the city or town council may each year assess and levy a tax on the taxable value of all taxable property in the city or town for airports and ports. (MCA 67-10-402)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

MUNICIPAL AIRPORTS - continued:

1. Suggested Audit Procedure:

- Determine that the mill levy for the airport, as assessed, was within the budget constraints as described above and as specified in MCA 15-10-420.

2. Compliance Requirements:

- The governing body may set up a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps. (MCA 67-10-402(4))
- The reserve fund must be approved during the normal budgeting procedure, and the necessity to resurface or improve runways by overlays or similar methods must be based upon competent engineering estimates. (MCA 67-10-402(4))
- The money in the reserve fund must be spent at least within each 10-year period. (MCA 67-10-402(4))
- The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps. (MCA 67-10-402(5))

Suggested Audit Procedures:

- If a reserve fund was established during the audit period, determine that the requirements described above relating to approval, purposes of the fund, and the required engineering estimate were adhered to.
- Test selected expenditures of the reserve fund to determine that they are for projects authorized by law, as specified above. If there are on-going projects, determine if any have exceeded the 10-year period allowed by law.
- Determine that the reserve fund does not exceed a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps.

3. Compliance Requirement:

- The money in a reserve fund may be invested in interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States, either short-term or long-term. Interest on the investments must be credited to the operations and maintenance budget of the airport. (MCA 67-10-402(5))

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

MUNICIPAL AIRPORTS - continued:

3. Suggested Audit Procedures:

- If the reserve fund moneys were invested, determine that the investments were as described above.
- Determine that any interest earnings were credited to the airport operating fund, and that no interest earnings were credited to the reserve fund.

4. Compliance Requirement:

- The revenues obtained from the ownership and operation of an airport must be deposited to the airport fund or joint airport fund, as appropriate. (MCA 67-10-404 and 67-10-206)

Suggested Audit Procedure:

- Test selected receipts and determine that money received from the operation of the airport was deposited to the airport fund or joint airport fund.

LIBRARY BOARDS:

1. Compliance Requirement:

- All library claims and payroll expenditures must be approved by the board of library trustees. (MCA 22-1-304(4))

Suggested Audit Procedure:

- As part of expenditure testing, determine that library expenditures were approved by the board of library trustees.

2. Compliance Requirements:

- Subject to the provisions of MCA 15-10-420, the governing body which has established a public library may levy a tax to maintain adequate library services. (MCA 22-1-304(1))
- The governing body may by resolution submit the question of imposing a tax levy (new, increased, or in excess of the mill levy limit in 15-10-420) to a vote of the qualified electors at an election as provided in MCA 15-10-425. The resolution must be adopted at least 75 days prior to the election at which the question will be voted on. (MCA 22-1-304(2))

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

LIBRARY BOARDS - continued:

2. Compliance Requirements - continued:

(Note: AGO #91, Vol. 41, held that the board of county commissioners may not modify the decision of library trustees concerning wage and salary amounts for library employees, may not modify an annual library budget adopted by library trustees, and may not refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by the library trustees. Although the opinion related to a county, the same statutes apply to cities and towns, and it appears that the holding would also apply to those types of entities. See also AGO #3, Vol. 48)

- The proceeds from the tax levy must be deposited to a separate public library fund (BARS Fund No. 2220). (MCA 22-1-304(3))

Suggested Audit Procedures:

- Determine that the tax levy for the library was within the limits noted above, unless approval was obtained from the voters for a higher levy.
- Determine that any proceeds from the tax levy for the library were deposited to a separate library fund.

3. Compliance Requirements:

- The governing body of the city or town may establish a library depreciation reserve fund (a capital projects fund-type) to be used for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve the city, town, or city-county library services. (MCA 22-1-305)
- Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year. Such moneys include but are not limited to city or city-county appropriations, federal revenue sharing funds, and public and private grants. (MCA 22-1-306)
- The moneys held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund. (MCA 22-1-307)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

LIBRARY BOARDS - continued:

3. Suggested Audit Procedures:

- Test selected expenditures from the library depreciation reserve fund and determine that they were used for the purposes specified above.
- Review revenues to the fund and determine that they were from only the sources as described above.
- Determine that any interest earned from the investment of moneys held in the library depreciation reserve fund is credited back to that fund.

4. Compliance Requirement:

- Library trustees will serve without compensation, except for actual and necessary expenses incurred in the performance of their official duties. (MCA 22-1-308(3) and 22-1-317(3))

Suggested Audit Procedure:

- As part of expenditure testing, determine that payments to library trustees were only for actual and necessary expenses incurred in performing their duties.

5. Compliance Requirement:

- The library board must prepare an annual report to the governing body of the city or town regarding the condition and operation of the library, including a financial statement. The trustees shall also submit an annual report to the State Library. (MCA 22-1-309(7))

Suggested Audit Procedures:

- Determine that the required annual report was submitted to the governing body of the local government and to the State Library.
- Verify that the amounts reported in the annual reports to the governing body, the State Library, and the Department of Administration (City's annual financial report) were the same, and agreed to the accounting records maintained by the library.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

LIBRARY BOARDS - continued:

6. Compliance Requirement:

- The library may accept gifts, grants, donations, devises, or bequests. These must be maintained separately from regular library funds. (MCA 22-1-309(8))

Suggested Audit Procedure:

- Determine that funds received from gifts, grants, donations, devises, or bequests are maintained in a fund or funds separate from regular library funds.

CITY AND MUNICIPAL COURTS:

(**Note:** A **city court** is established in each city or town, with jurisdiction as described in Title 3, Chapter 11, Part 1. A city judge must meet the qualifications of a justice of the peace (JP). A **municipal court** may be established in a city with a population of 4,000 or more if the governing body elects to do so by two-thirds majority vote. The jurisdiction of municipal courts is described in Title 3, Chapter 6, Part 1. A municipal judge must meet qualifications similar to those of a judge of a district court.)

1. Compliance Requirements:

- City or municipal courts must maintain at least the minimum records required by State statutes. (MCA 3-11-206 and 3-6-302) The records in civil causes must conform as nearly as possible to the records of district courts. In criminal causes, in cases arising under city ordinances, and in cases mentioned in MCA 3-11-103, the records must be similar to the records now kept in JP courts. (MCA 3-6-302) (**Note:** At a minimum the court shall maintain a docket that details each proceeding or action, as specified in MCA 3-5-508, for civil causes, and as specified in MCA 3-10-501, for cases required to adhere to the standards for JP courts. Also, see CNTY-14 for a list of records to be maintained for JP courts.)
- The records of the court must be kept by the clerk, if there is one for that court. (**Note: Municipal courts must have a clerk of the court (MCA 3-6-301) while in city courts the governing body may provide a clerk of city court (MCA 3-11-206(1)(b)).**)

Suggested Audit Procedure:

- Review the court records and determine that they contain at least the minimum information required by statute.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

CITY AND MUNICIPAL COURTS - continued:

2. Compliance Requirements:

- The governing body of a city may determine by ordinance the number of judges required to operate a city or municipal court. The governing body must also set the salary of city or municipal court judges by ordinance or resolution. (MCA 3-6-201 & 203 and 3-11-201 & 202)
- Each city and municipal court judge shall receive actual and necessary travel expenses, as provided in 2-18-501 through 2-18-503, incurred in the performance of official duties. (MCA 3-6-203 & 3-11-202)
- A **municipal** court judge must meet continuing judicial education requirements (a minimum of 15 hours) each year, and is entitled to reimbursement for all actual and necessary expenses and costs incurred in attending continuing judicial or legal education courses. (MCA 3-6-202)
- A **city** court judge must attend two mandatory annual training sessions, and is entitled to reimbursement for all actual and necessary travel expenses, as provided in 2-18-501 through 2-18-503, and the costs of registration, books and other materials related to the sessions. (MCA 3-11-204)
- **In a town or third-class city**, the council may designate a JP or the city judge of another city or town to act as **city** judge. The city or town may by ordinance fix the funding for the judge and enter into an agreement with the county, the other city or town, or the JP or judge for payment of salaries and training expenses. If the JP or city judge of another city or town is required to travel from his/her place of residence to hold court, the JP or judge must be paid the actual and necessary travel expenses, as provided in 2-18-501 through 2-18-503, by the town or city in which the court is held. (MCA 3-11-205)

Suggested Audit Procedure:

- Determine that the salaries of municipal or city judges are as set by ordinance or resolution, and that expenses paid to the judges are necessary for the performance of their official duties and are sufficiently documented. If a JP or city judge of another city or town is designated to act as the city judge, ensure that the payment of salaries, training expenses, and travel expenses are per any agreement.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

CITY AND MUNICIPAL COURTS - continued:

3. Compliance Requirements:

- All fines imposed and collected by a city or municipal court must be paid to the city or town finance officer or treasurer. Although not designated in the statutes, these collections are generally deposited in the city/town general fund. (MCA 46-17-303 (city court) & 46-17-402 (municipal court)).
- Exceptions to the above general distribution rule:
 - a. The court may contract with a private person or entity for the collection of fines, in which case a reasonable fee may be paid to that private person or entity. (MCA 46-17-303 & 46-17-402)
 - b. Violations of speed limits near schools – 50% of the fine must be distributed as provided in 46-17-402 (see general distribution, above), and 50% must be forwarded to the local authority that adopted the special speed limit. (MCA 61-8-726) (**Note:** this appears to apply only to municipal court.)

Suggested Audit Procedure:

- Test selected remittances from the city or municipal court to the city/town treasurer to determine that all fines collected were distributed as discussed above.

4. Compliance Requirements:

- In courts of original jurisdiction, upon an individual's conviction or forfeiture of bond or bail, there is imposed a charge that is in addition to any fine, court costs, or fees imposed. These amounts are as follows: (a) \$15 for each misdemeanor charge, (b) the greater of \$20 or 10% of the fine levied for each felony charge and (c) an additional \$50 for each misdemeanor and felony charge under Title 45, and MCA 61-8-401 and 61-8-406, which pertain to DUI's. (MCA 46-18-236)
- The charges described above under (a) and (b) above are to be deposited with the city/town finance officer or treasurer, to be used to pay the salaries of the city or town attorney and deputies. (MCA 46-18-236(5) & (6))
- The charge described above under (c) is to be distributed as follows:
 - a. If the city/town operates or uses a victim and witness advocate program that provides the services specified in MCA Title 40, Chapter 15, and Title 46, Chapter 24, \$49 of the \$50 shall be used for payment of the expenses of that program. (BARS Fund #2917) The other \$1 shall be deposited in the fund that pays the collecting court's administrative costs incurred in the collection of the charge (usually the city/town general fund). (**Note:** This \$1 is not subject to allocation under 46-18-251, as discussed in Compliance Requirement No. 6, below.)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

CITY AND MUNICIPAL COURTS - continued:

4. Compliance Requirements - continued:

- b. If the city/town does not operate or use a victim and witness advocate program, \$49 of the \$50 collected under (c) above must be paid to the crime victims compensation and assistance program in the department of justice*** for deposit in the state general fund to be used to provide services to crime victims as provided in MCA Title 53, chapter 9, part 1 (BARS Fund No. 7699-2). The other \$1 is distributed as described above. (***)**Note:** The city remits this money to the county treasurer. The county treasurer then includes this collection in the county's monthly collection report to the Department of Revenue.)
(MCA 46-18-236)

Suggested Audit Procedure:

- Test selected cases to determine that upon conviction or forfeiture of bond or bail, the charges described above are imposed in addition to any other required fine, court cost, or fee, and that it is distributed as described above.

5. Compliance Requirements:

(***)**Note:** The city remits the following surcharge collections to the county treasurer. The county treasurer then includes these collections in the county's monthly collection report to the Department of Revenue.)

- Court Information Technology Surcharge - In courts of original jurisdiction, a \$10 surcharge that is in addition to any fine, court costs, or fees is imposed:
 - (a) on a defendant in criminal cases upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail;
 - (b) on the initiating party in civil and probate cases, at the commencement of each action, proceeding, or filing; and
 - (c) on each defendant or respondent in civil cases upon appearance.
 This surcharge is to be forwarded to the State*** (BARS Fund No. 7458) for deposit in the State general fund, for state funding of court information technology. (MCA 3-1-317)
- Montana Law Enforcement Academy Surcharge - In courts of limited jurisdiction, a \$10 surcharge that is in addition to any fine, court costs, or fees is imposed on a defendant who is convicted of criminal conduct or who forfeits bond. This surcharge is to be forwarded to the State*** for deposit in an account in the state special revenue fund to be used by the Department of Justice on behalf of the Montana law enforcement academy. (MCA 3-1-318))

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

CITY AND MUNICIPAL COURTS - continued:

Suggested Audit Procedure:

- Test selected cases to determine that the above two surcharges are collected in the amount, and distributed in the manner, indicated above.

6. Compliance Requirement:

- If a defendant is subject to payment of restitution and any combination of fines, costs, surcharges, etc., 50% of all money collected from the defendant must be first applied to payment of restitution and the balance must be applied to these other payments, in the order listed (i.e., surcharge in 46-18-236 first, then supervisory fees, then costs, then fines.) (MCA 46 -18-251) (**Note:** The funds deposited under MCA 46-18-236(7)(b) (i.e., the \$1 deposited to the fund that pays the collecting court's administrative costs incurred in the collection of the surcharge discussed in Compliance Requirement No. 4, above) are not subject to this allocation.)

Suggested Audit Procedure:

- Test selected cases to determine that money collected from a defendant is allocated as indicated above.